

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<i>In the Matter of</i>	)	
	)	CG Docket No. 02-278
Petition of Five-M Software Systems	)	CG Docket No. 05-338
Corporation For Retroactive Waiver of	)	
47 C.F.R. § 64.1200(a)(4)(iv)	)	

**COMMENT OF WHOLESALE POINT, INC.  
TO PETITION OF FIVE-M SOFTWARE SYSTEMS CORPORATION**

The petition for retroactive waiver filed by Five-M Software Systems Corporation is abusive and should be denied.

Remarkably, Five-M Software Systems Corporation (“Five-M”) never claims that it obtained consent from plaintiff, Wholesale Point, Inc., nor any other any recipient of the junk faxes it sent. (Petition, p. 3) Plaintiff’s complaint alleges that Five-M sent it an unsolicited fax advertisement on December 27, 2013. (Exhibit A of Petition, ¶ 9) In addition, Plaintiff alleges that the faxes do not contain an opt out notice in the form required by 47 U.S.C. § 227. (Exhibit A of Petition, ¶ 15) Five-M answered plaintiff Wholesale Point, Inc.’s complaint asserting numerous affirmative defenses, *inter alia*, consent, with plaintiff and the putative class members. (Appendix A) Notably, Five-M denies responsibility for sending or causing to send the junk faxes at issue, and denies that the junk faxes do not contain an “opt out” notice that complies with 47 U.S.C. § 227. (Appendix A, ¶¶ 11, 15)

In its petition, Five-M fails to supply any basis for its assertions that the faxes it sent were “solicited” or that it obtained “prior express permission” from anyone, including plaintiff. The Declaration of Five-M’s Executive Vice President, Allen P. Levicky, adds nothing to the

Petition and is bereft of any facts or details to support the assertion that Five-M's faxes were sent with prior express invitation or permission.

The Commission has repeatedly held that the business claiming consent or an established business relationship has the burden of proof. "[A] sender should have the obligation to demonstrate that it complied with the rules, including that it had the recipient's prior express invitation or permission." *In re: Rules and Regulations Implementing The Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; CG Docket No. 05-338, FCC Release 06-42, 21 FCC Rcd 3787, at 3812, 2006 FCC LEXIS 1713; 38 Comm. Reg. (P & F) 167 (April 6, 2006). The FCC has consistently adhered to this position. *Virtual Auto Loans*, EB-09-TC-230, 2009 FCC LEXIS 4342 (March 9, 2009); *New York Security and Private Patrol, Inc.*, EB-09-TC-231, 2009 FCC LEXIS 4343 (March 9, 2009).

Courts have also followed this rule and placed the burden of proof on the sender of the communication. *Gutierrez v. Barclays Group*, 10cv1012 DMS (BGS), 2011 U.S. Dist. LEXIS 12546, 2011 WL 579238, at \*2 (S.D. Cal. Feb. 9, 2011); *Van Sweden Jewelers, Inc. v. 101 VT, Inc.*, 1:10-cv-253, 2012 WL 4074620, 2012 U.S. Dist. LEXIS 85663 (W.D.Mich., June 21, 2012); *Green v. Service Master on Location Servs. Corp.*, 07 C 4705, 2009 WL 1810769, 2009 U.S. Dist. LEXIS 53297 (N.D. Ill. June 22, 2009); *Sadowski v. Med1 Online, LLC*, 07 C 2973, 2008 WL 2224892, \* 3-4, 2008 U.S. Dist. LEXIS 41766 (N.D. Ill. May 27, 2008) (observing that issue of consent is an affirmative defense); *Hinman v. M & M Rental Ctr., Inc.*, 596 F. Supp. 2d 1152 (N.D. Ill. 2009) (finding that consent did not exist with respect to the class because the TCPA allocates the burden of obtaining consent on the senders of unsolicited faxes, rather than requiring recipients to "opt-out"); *Lampkin v. GGH, Inc.*, 2006 OK CIV APP 131, 146 P.3d 847,

¶27 (Okla. Ct. App. 2006) (recipient should not be charged with proving the negative propositions that it did not give permission or did not have a business relationship with sender). This is consistent with the general rule that the party claiming the benefit of an exception in a federal statute, and the party who logically would have evidence of consent or an established business relationship, has the burden of coming forward with at least some evidence of the applicability of these exceptions. *E.E.O.C. v. Chicago Club*, 86 F.3d 1423, 1429-30 (7th Cir. 1996); *FTC v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948); *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 128 S. Ct. 2395, 2400, 171 L. Ed. 2d 283 (2008) ("[T]he burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits."); *Irwin v. Mascott*, 96 F. Supp. 2d 968 (N.D. Cal. 1999).

Here, Five-M offers absolutely nothing to substantiate that anyone consented to receiving faxes from it.

Wholesale Point, Inc. denies giving consent to the sender of the faxes. (Affidavit of Kamal Haddad, Appendix B). The faxes seek to establish a relationship with the recipient by selling Five-M's wholesale distribution software systems. The fax attached to plaintiff's complaint is not specifically addressed to any person, which would normally be the case if consent to send it had been obtained. In short, the faxes have every indication of a "blast fax" sent without consent or an established business relationship.

In addition, Five-M does not state why it "believed" its faxes did not require an opt out notice. There is nothing in the Petition to indicate that Five-M read or relied on the Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005), or Junk Fax Order, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax*

*Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787 (2006), prior to sending its junk faxes. There is also no evidence that Five-M, its Executive Vice President, or anyone else that sent the faxes misunderstood anything about their obligation to include an opt-out notice. There is no opt out notice of any kind on the junk faxes attached to plaintiff's complaint. "We emphasize, however, that simple ignorance of the TCPA or the Commission's attendant regulations is not grounds for waiver." (FCC 14-164, at ¶ 26)

The Junk Fax Order requires that fax advertisements sent to recipients that provided prior express invitation or permission must include an opt out notice. 47 C.F.R. § 64.1200(a)(4)(iv); *see* Junk Fax Order, 21 FCC Rcd at 3812, para. 48; *See* Petition, pp. 2-3. Petitioners may apply for a retroactive waiver "of the Commission's rules requiring an opt-out notice on fax ads sent with the prior express permission of the recipient...." *Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipients's prior Express Permission*, CG Docket No. 02-278, 05-338, Order, FCC 14-164, ¶ 22 (Oct. 30, 2014) (emphasis added). Importantly, Five-M does not contend in its petition that its facsimiles were advertisements. Five-M's answer denies that it sent advertisements. (Appendix A, ¶¶ 9-11)

Finally, Five-M does not give any indication of its financial resources or its potential liability in plaintiff's case. Instead, Five-M only states that the TCPA imposes "staggering aggregated statutory damages." (Petition, p. 4) In its answer, Five-M denied that it transmitted fax advertisements to more than 40 other persons in Illinois and denied that numerosity was satisfied. (Appendix A, ¶¶ 19, 28, 44, 58, 71, 84) On this record, Five-M may be liable for at the

most, a maximum of \$58,500 (39 faxes x \$1,500 per fax). Five-M is not a publicly traded limited liability corporation but on its website, it claims to be “a software vendor providing complete software solutions for the Distribution Industry for over 25 years.” [www.fivem.com](http://www.fivem.com) Plaintiff submits that it is unlikely that \$58,500 is a drain on its resources.

On this record, no action by the Commission is warranted. There are no special circumstances to warrant a deviation from the general rule and a waiver would not serve the public interest. Five-M’s petition should be stricken and/or denied. The petition is nothing more than a baseless attempt to complicate an enforcement action by the recipient of unsolicited advertising faxes.

Respectfully submitted,

s/ Daniel A. Edelman

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# **APPENDIX A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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WHOLESALE POINT, INC.,  
on behalf of plaintiff and the class  
members defined herein,

Plaintiff,

v.

FIVE-M SOFTWARE SYSTEMS  
CORPORATION, and  
JOHN DOES 1-10,

Defendants.

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Case No. 15-cv-2196

Judge Tharp  
Magistrate Judge Cox

**ANSWER TO COMPLAINT**

Defendant Five-M Software Systems Corporation (“Defendant”), by and through its undersigned counsel, for its answer to the Complaint (“Complaint”) of plaintiff Wholesale Point, Inc. on behalf of itself and as the representative of a putative class (“Plaintiff”), as follows:

**INTRODUCTION**

1. Plaintiff Wholesale Point, Inc., brings this action to secure redress for the actions of defendant Five-M Software Systems Corporation in sending or causing the sending of unlawful advertisements to telephone facsimile machines in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and the common law.

**ANSWER: Defendant denies the allegations contained in paragraph 1 of the Complaint, including the allegations that Defendant violated the Telephone Consumer Protection Act (“TCPA”), the Illinois Consumer Fraud Act (“ICFA”) and the common law, except admits**

**that, in this action, Plaintiff seeks damages for alleged violations of the TCPA, ICFA, and the common law.**

2. The TCPA expressly prohibits unsolicited fax advertising. Unsolicited fax advertising damages the recipients. The recipient is deprived of its paper and ink or toner and the use of its fax machine. The recipient also wastes valuable time it would have spent on something else. Unsolicited faxes prevent fax machines from receiving and sending authorized faxes, cause wear and tear on fax machines, and require labor to attempt to identify the source and purpose of the unsolicited faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 2 and refers to the TCPA for a statement of its prohibitions.**

### **PARTIES**

3. Plaintiff Wholesale Point, Inc., is an Illinois corporation with offices at 7223 South Route 83, Suite 198, Willowbrook, Illinois 60527, where it maintains telephone facsimile equipment.

**ANSWER: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, except admits that Plaintiff is an Illinois Corporation.**

4. Defendant Five-M Software Systems Corporation is a New Jersey corporation that has offices at 1130 Route 46 West, Parsippany, New Jersey 07054.

**ANSWER: Defendant admits that it is a corporation organized and existing under the laws of the State of New Jersey with offices in Parsippany, New Jersey.**



5. Defendants John Does 1-10 are other natural or artificial persons that were involved in the sending of the facsimile advertisements described below. Plaintiff does not know who they are.

**ANSWER: Defendant denies the allegations contained in paragraph 5 of the Complaint.**

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction under 28 U.S.C. §§1331 and 1367. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 751-53 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).

**ANSWER: The allegations contained in paragraph 6 of the Complaint consist solely of legal conclusions to which no response is required, and Defendant respectfully refers all questions of law to the Court. To the extent any response is required, Defendant denies the allegations contained in paragraph 6 of the Complaint.**

7. Personal jurisdiction exists under 735 ILCS 5/2-209, in that defendants:
- a. Have committed tortious acts in Illinois by causing the transmission of unlawful communications into the state.
  - b. Have transacted business in Illinois.

**ANSWER: The allegations contained in paragraph 7 of the Complaint consist solely of legal conclusions to which no response is required, and Defendant respectfully refers all questions of law to the Court. To the extent any response is required, Defendant denies the allegations contained in paragraph 7 of the Complaint.**

8. Venue in this District is proper for the same reason.

**ANSWER: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.**

### **FACTS**

9. On December 27, 2013, plaintiff Wholesale Point, Inc., received the fax advertisement attached as Exhibit A on its facsimile machine.

**ANSWER: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.**

10. Discovery may reveal the transmission of additional faxes as well.

**ANSWER: Paragraph 10 does not plead facts and thus does not require a response. To the extent a response is required, Defendant denies the allegations contained in paragraph 10 of the Complaint.**

11. Defendant Five-M Software Systems Corporation is responsible for sending or causing the sending of the faxes.

**ANSWER: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.**

12. Defendant Five-M Software Systems Corporation, as the entity whose products or services were advertised in the faxes, derived economic benefit from the sending of the faxes.

**ANSWER: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12**

13. Defendant Five-M Software Systems Corporation either negligently or willfully violated the rights of plaintiff and other recipients in sending the faxes.

**ANSWER: Denies the allegations contained in paragraph 13.**

14. Each fax refers to a website registered to defendant Five-M Software Systems Corporation.

**ANSWER: Defendant denies the allegations contained in paragraph 14 of the Complaint, and refers to the alleged faxes for their contents.**

15. The faxes do not contain an “opt out” notice that complies with 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 15 of the Complaint and refers to the alleged faxes for their contents.**

16. The TCPA makes unlawful the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine ...” 47 U.S.C. §227(b)(1)(C).

**ANSWER: Defendant denies the allegations contained in paragraph 16 of the Complaint and refers the Court to the statute cited for a full and complete statement of its provisions.**

17. The TCPA provides for affirmative defenses of consent or an established business relationship. Both defenses are conditioned on the provision of an opt out notice that complies with the TCPA. *Holtzman v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013).

**ANSWER: Defendant denies the allegations contained in paragraph 17 of the Complaint and refers the Court to the statute cited for a full and complete statement of its provisions**

18. On information and belief, the faxes attached hereto were sent as part of a mass broadcasting of faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 18 of the Complaint.**

19. On information and belief, defendants have transmitted similar fax advertisements to at least 40 other persons in Illinois.

**ANSWER: Defendant denies the allegations contained in paragraph 19 of the Complaint.**

20. There is no reasonable means for plaintiff or other recipients of defendants' advertising faxes to avoid receiving illegal faxes. Fax machines must be left on and ready to receive the urgent communications authorized by their owners.

**ANSWER: Defendant denies the allegations contained in paragraph 20 of the Complaint.**

#### **COUNT I – TCPA**

21. Plaintiff incorporates ¶¶ 1-20.

**ANSWER: Defendant repeats and realleges each and every response to the allegations contained in paragraphs 1 through 20 of the Complaint as though fully set forth herein.**

22. The TCPA, 47 U.S.C. §227(b)(3), provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

**ANSWER: Defendant denies the allegations contained in paragraph 22 of the Complaint, and respectfully refers the Court to the statute cited for a full and complete statement of its terms and refers all questions of law to the Court.**

23. Plaintiff and each class member suffered damages as a result of receipt of the faxes, in the form of paper and ink or toner consumed as a result. Furthermore, plaintiff's statutory right of privacy was invaded.

**ANSWER: Defendant denies the allegations contained in paragraph 23 of the Complaint.**

24. Plaintiff and each class member is entitled to statutory damages.

**ANSWER: Defendant denies the allegations contained in paragraph 24 of the Complaint.**

25. Defendants violated the TCPA even if their actions were only negligent.

**ANSWER: Defendant denies the allegations contained in paragraph 25 of the Complaint.**

26. Defendants should be enjoined from committing similar violations in the future.

**ANSWER: Defendant denies the allegations contained in paragraph 26 of the Complaint.**

**CLASS ALLEGATIONS**

27. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with fax numbers (b) who, on or after a date four years prior to the filing of this action (28 U.S.C. §1658), (c) were sent faxes by or on behalf of defendant Five-M Software Systems Corporation promoting its goods or services for sale (d) which did not contain an opt out notice as described in 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 27 of the Complaint, including that the proposed class definitions are proper, class members are ascertainable or identifiable and that this action is appropriate for class treatment, except admits that, in this action, Plaintiff brought this action as a putative class action.**

28. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

**ANSWER: Defendant denies the allegations contained in paragraph 28 of the Complaint.**

29. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unlawful fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.

- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

**ANSWER: Defendant denies the allegations contained in paragraph 29 of the Complaint.**

30. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

**ANSWER: Defendant denies the allegations contained in paragraph 30 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations relating to the experience of Plaintiff's retained counsel.**

31. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

**ANSWER: Defendant denies the allegations contained in paragraph 31 of the Complaint.**

32. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

**ANSWER: Defendant denies the allegations contained in paragraph 32 of the Complaint.**

33. Several courts have certified class actions under the TCPA. *Holtzman v. Turza*, 08 C 2014, 2009 WL 3334909, 2009 U.S. Dist. LEXIS 95620 (N.D.Ill., Oct. 14, 2009), *aff'd* in relevant part, 728 F.3d 682 (7<sup>th</sup> Cir. 2013); *Sadowski v. Med1 Online, LLC*, 07 C 2973, 2008 WL 2224892, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill., May 27, 2008); *CE Design Ltd. v Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D.Ill. 2009); *Targin Sign Sys. v Preferred Chiropractic Ctr., Ltd.*, 679 F. Supp. 2d 894 (N.D.Ill. 2010); *Garrett v. Ragle Dental Lab, Inc.*, 10 C 1315, 2010 U.S. Dist. LEXIS 108339, 2010 WL 4074379 (N.D.Ill., Oct. 12, 2010); *Hinman v. M & M Rental Ctr.*, 545 F.Supp. 2d 802 (N.D.Ill. 2008); *Clearbrook v. Rooflifters, LLC*, 08 C 3276, 2010 U.S. Dist. LEXIS 72902 (N.D. Ill. July 20, 2010) (Cox, M.J.); *G.M. Sign, Inc. v. Group C Communs., Inc.*, 08 C 4521, 2010 WL 744262, 2010 U.S. Dist. LEXIS 17843 (N.D. Ill. Feb. 25, 2010); *Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642 (W.D.Wash. 2007); *Display South, Inc. v. Express Computer Supply, Inc.*, 961 So.2d 451, 455 (La. App. 1st Cir. 2007); *Display South, Inc. v. Graphics House Sports Promotions, Inc.*, 992 So. 2d 510 (La. App. 1st Cir. 2008); *Lampkin v. GGH, Inc.*, 146 P.3d 847 (Ok. App. 2006); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. (App.) 94, 50 P.3d 844 (2002); *Core Funding Group, LLC v. Young*, 792 N.E.2d 547 (Ind.App. 2003); *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285; 263 P.3d 767 (2011); *Karen S. Little, L.L.C. v. Drury Inns. Inc.*, 306 S.W.3d 577 (Mo. App. 2010).

**ANSWER: Defendant denies the allegations contained in paragraph 33 of the Complaint.**

34. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

**ANSWER: Defendant denies the allegations contained in paragraph 34 of the Complaint.**



WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Actual damages;
- b. Statutory damages;
- c. An injunction against the further transmission of unlawful fax advertising;
- d. Costs of suit;
- e. Such other or further relief as the Court deems just and proper.

**ANSWER: In response to Plaintiff's unnumbered "Wherefore" paragraph following paragraph 34 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought therein or any relief whatsoever. Defendant further denies that it is liable to Plaintiff under any theory of liability or damages.**

**COUNT II – ILLINOIS CONSUMER FRAUD ACT**

35. Plaintiff incorporates ¶¶ 1-20.

**ANSWER: Defendant repeats and realleges each and every response to the allegations contained in paragraphs 1 through 20 of the Complaint as though fully set forth herein.**

36. Defendants engaged in unfair acts and practices, in violation of ICFA § 2, 815 ILCS 505/2, by sending fax advertising to plaintiff and others.

**ANSWER: Defendant denies the allegations contained in paragraph 36 of the Complaint.**

37. Defendants engaged in an unfair practice by engaging in conduct that is contrary to public policy, unscrupulous, and caused injury to recipients of their advertising.

**ANSWER: Defendant denies the allegations contained in paragraph 37 of the Complaint.**

38. Plaintiff and each class member suffered damages as a result of receipt of the unlawful faxes, in the form of paper and ink or toner consumed as a result.

**ANSWER: Defendant denies it sent any unlawful faxes. Answering further, Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 38 of the Complaint.**

39. Defendants engaged in such conduct in the course of trade and commerce.

**ANSWER: Defendant denies the allegations contained in paragraph 39 of the Complaint.**

40. Defendants' conduct caused recipients of their advertising to bear the cost thereof. This gave defendants an unfair competitive advantage over businesses that advertise lawfully, such as by direct mail. For example, an advertising campaign targeting one million recipients would cost \$500,000 if sent by U.S. mail but only \$20,000 if done by fax broadcasting. The reason is that instead of spending \$480,000 on printing and mailing his ad, the fax broadcaster misappropriates the recipients' paper and ink. "Receiving a junk fax is like getting junk mail with the postage due". Remarks of Cong. Edward Markey, 135 Cong Rec E 2549, Tuesday, July 18, 1989, 101st Cong. 1st Sess.

**ANSWER: Defendant denies the allegations contained in paragraph 40 of the Complaint.**

41. Defendants' shifting of advertising costs to plaintiff and the class members in this manner makes such practice unfair. In addition, defendants' conduct was contrary to public policy, as established by the TCPA and Illinois statutory and common law.

**ANSWER: Defendant denies the allegations contained in paragraph 41 of the Complaint.**

42. Defendants should be enjoined from committing similar violations in the future.

**ANSWER: Defendant denies the allegations contained in paragraph 42 of the Complaint.**

**CLASS ALLEGATIONS**

43. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date three years prior to the filing of this action, (c) were sent faxes by or on behalf of defendant Five-M Software Systems Corporation promoting its goods or services for sale (d) which did not contain an opt out notice as described in 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 43 of the Complaint, including that the proposed class definitions are proper, class members are ascertainable or identifiable and that this action is appropriate for class treatment, except admits that, in this action, Plaintiff brought this action as a putative class action.**

44. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

**ANSWER: Defendant denies the allegations contained in paragraph 44 of the Complaint.**

45. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unlawful fax advertisements;

- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

**ANSWER: Defendant denies the allegations contained in paragraph 45 of the Complaint.**

46. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

**ANSWER: Defendant denies the allegations contained in paragraph 46 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations relating the experience of Plaintiff's retained counsel.**

47. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

**ANSWER: Defendant denies the allegations contained in paragraph 47 of the Complaint.**

48. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

**ANSWER: Defendant denies the allegations contained in paragraph 48 of the Complaint.**

49. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

**ANSWER: Defendant denies the allegations contained in paragraph 49 of the Complaint.**

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unlawful fax advertising;
- c. Attorney's fees, litigation expenses and costs of suit;
- d. Such other or further relief as the Court deems just and proper.

**ANSWER: In response to Plaintiff's unnumbered "Wherefore" paragraph following paragraph 49 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought therein or any relief whatsoever. Defendant further denies that it is liable to Plaintiff under any theory of liability or damages.**

### **COUNT III – CONVERSION**

50. Plaintiff incorporates ¶¶ 1-20.

**ANSWER: Defendant repeats and realleges each and every response to the allegations contained in paragraphs 1 through 20 of the Complaint as if fully set forth herein.**

51. By sending plaintiff and the class members unlawful faxes, defendants converted to their own use ink or toner and paper belonging to plaintiff and the class members.

**ANSWER: Defendant denies the allegations contained in paragraph 51 of the Complaint.**

52. Immediately prior to the sending of the unlawful faxes, plaintiff and the class members owned and had an unqualified and immediate right to the possession of the paper and ink or toner used to print the faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 52 of the Complaint.**

53. By sending the unlawful faxes, defendants appropriated to their own use the paper and ink or toner used to print the faxes and used them in such manner as to make them unusable. Such appropriation was wrongful and without authorization.

**ANSWER: Defendant denies the allegations contained in paragraph 53 of the Complaint.**

54. Defendants knew or should have known that such appropriation of the paper and ink or toner was wrongful and without authorization.

**ANSWER: Defendant denies the allegations contained in paragraph 54 of the Complaint.**

55. Plaintiff and the class members were deprived of the paper and ink or toner, which could no longer be used for any other purpose. Plaintiff and each class member thereby suffered damages as a result of receipt of the unlawful faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 55 of the Complaint.**

56. Defendants should be enjoined from committing similar violations in the future.

**ANSWER: Defendant denies the allegations contained in paragraph 56 of the Complaint.**

**CLASS ALLEGATIONS**

57. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes by or on behalf of defendant Five-M Software Systems Corporation promoting its goods or services for sale (d) which did not contain an opt out notice as described in 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 57 of the Complaint, including that the proposed class definitions are proper, class members are ascertainable or identifiable and that this action is appropriate for class treatment, except admits that, in this action, Plaintiff brought this action as a putative class action.**

58. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

**ANSWER: Defendant denies the allegations contained in paragraph 58 of the Complaint.**

59. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unlawful fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.

- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

**ANSWER: Defendant denies the allegations contained in paragraph 59 of the Complaint.**

60. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

**ANSWER: Defendant denies the allegations contained in paragraph 60 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations relating the experience of Plaintiff's retained counsel.**

61. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

**ANSWER: Defendant denies the allegations contained in paragraph 61 of the Complaint.**

62. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

**ANSWER: Defendant denies the allegations contained in paragraph 62 of the Complaint.**

63. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.



**ANSWER: Defendant denies the allegations contained in paragraph 63 of the Complaint.**

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unlawful fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

**ANSWER: In response to Plaintiff's unnumbered "Wherefore" paragraph following paragraph 63 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought therein or any relief whatsoever. Defendant further denies that it is liable to Plaintiff under any theory of liability or damages.**

#### **COUNT IV – PRIVATE NUISANCE**

64. Plaintiff incorporates ¶¶ 1-20.

**ANSWER: Defendant repeats and realleges each and every response to the allegations contained in paragraphs 1 through 20 of the Complaint as if fully set forth herein.**

65. Defendants' sending plaintiff and the class members unlawful faxes was an unreasonable invasion of the property of plaintiff and the class members and constitutes a private nuisance.

**ANSWER: Defendant denies the allegations contained in paragraph 65 of the Complaint.**

66. Congress determined, in enacting the TCPA, that the prohibited conduct was a “nuisance.” *Universal Underwriters Ins. Co. v. Lou Fusz Automotive Network, Inc.*, 401 F.3d 876, 882 (8th Cir. 2005).

**ANSWER: Defendant denies the allegations contained in paragraph 66 of the Complaint.**

67. Defendants acted either intentionally or negligently in creating the nuisance.

**ANSWER: Defendant denies the allegations contained in paragraph 67 of the Complaint.**

68. Plaintiff and each class member suffered damages as a result of receipt of the unlawful faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 68 of the Complaint.**

69. Defendants should be enjoined from continuing its nuisance.

**ANSWER: Defendant denies the allegations contained in paragraph 69 of the Complaint.**

### **CLASS ALLEGATIONS**

70. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers, (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes by or on behalf of defendant Five-M Software Systems Corporation promoting its goods or services for sale (d) which did not contain an opt out notice as described in 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 70 of the Complaint, including that the proposed class definitions are proper, class members are ascertainable**

**or identifiable and that this action is appropriate for class treatment, except admits that, in this action, Plaintiff brought this action as a putative class action.**

71. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

**ANSWER: Defendant denies the allegations contained in paragraph 71 of the Complaint.**

72. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unlawful fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

**ANSWER: Defendant denies the allegations contained in paragraph 72 of the Complaint.**

73. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

**ANSWER: Defendant denies the allegations contained in paragraph 73 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations relating to the experience of Plaintiff's retained counsel.**

74. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

**ANSWER: Defendant denies the allegations contained in paragraph 74 of the Complaint.**

75. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

**ANSWER: Defendant denies the allegations contained in paragraph 75 of the Complaint.**

76. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

**ANSWER: Defendant denies the allegations contained in paragraph 76 of the Complaint.**

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unlawful fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

**ANSWER:** In response to Plaintiff's unnumbered "Wherefore" paragraph following paragraph 76 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought therein or any relief whatsoever. Defendant further denies that it is liable to Plaintiff under any theory of liability or damages.

**COUNT V – TRESPASS TO CHATTELS**

77. Plaintiff incorporates ¶¶ 1-20.

**ANSWER:** Defendant repeats and realleges each and every response to the allegations contained in paragraphs 1 through 20 of the Complaint as if fully set forth herein.

78. Plaintiff and the class members were entitled to possession of the equipment they used to receive faxes.

**ANSWER:** Defendant denies the allegations contained in paragraph 78 of the Complaint.

79. Defendants' sending plaintiff and the class members unlawful faxes interfered with their use of the receiving equipment and constitutes a trespass to such equipment. *Chair King v. Houston Cellular*, 95cv1066, 1995 WL 1693093 at \*2 (S.D. Tex. Nov. 7, 1995) (denying a motion to dismiss with respect to plaintiff's trespass to chattels claim for unlawful faxes), vacated on jurisdictional grounds 131 F.3d 507 (5th Cir. 1997).

**ANSWER:** Defendant denies the allegations contained in paragraph 79 of the Complaint.

80. Defendants acted either intentionally or negligently in engaging in such conduct.

**ANSWER:** Defendant denies the allegations contained in paragraph 80 of the Complaint.

81. Plaintiff and each class member suffered damages as a result of receipt of the unlawful faxes.

**ANSWER: Defendant denies the allegations contained in paragraph 81 of the Complaint.**

82. Defendants should be enjoined from continuing trespasses.

**ANSWER: Defendant denies the allegations contained in paragraph 82 of the Complaint.**

### **CLASS ALLEGATIONS**

83. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes by or on behalf of defendant Five-M Software Systems Corporation promoting its goods or services for sale (d) which did not contain an opt out notice as described in 47 U.S.C. §227.

**ANSWER: Defendant denies the allegations contained in paragraph 83 of the Complaint, including that the proposed class definitions are proper, class members are ascertainable or identifiable and that this action is appropriate for class treatment, except admits that, in this action, Plaintiff brought this action as a putative class action.**

84. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

**ANSWER: Defendant denies the allegations contained in paragraph 84 of the Complaint.**

85. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unlawful fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

**ANSWER: Defendant denies the allegations contained in paragraph 85 of the Complaint.**

86. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

**ANSWER: Defendant denies the allegations contained in paragraph 86 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations relating the experience of Plaintiff's retained counsel.**

87. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

**ANSWER: Defendant denies the allegations contained in paragraph 87 of the Complaint.**

88. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

**ANSWER: Defendant denies the allegations contained in paragraph 88 of the Complaint.**

89. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

**ANSWER: Defendant denies the allegations contained in paragraph 89 of the Complaint.**

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unlawful fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

**ANSWER: In response to Plaintiff's unnumbered "Wherefore" paragraph following paragraph 89 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought therein or any relief whatsoever. Defendant further denies that it is liable to Plaintiff under any theory of liability or damages.**



**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

2. Plaintiff and others allege to be members of the purported class lack standing to bring or maintain the claims asserted in the Complaints.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

3. Plaintiff's claims and the claims of others alleged to be members of the purported class are barred in whole or in part because they have failed to mitigate their alleged damages, if any.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

4. Plaintiff's claims and the claims of others alleged to be member of the purported class are barred in whole or in part because Plaintiff and others alleged to be members of the purported class consented to, ratified, or acquiesced in all of the alleged acts or omissions of which they complain.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiff's claims are barred by the applicable statute of limitations and any limitations and conditions precedent contained in the applicable law, including but not limited to 28 U.S.C. §1658.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

6. Defendant's conduct was privileged and/or justified.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

7. To the extent Plaintiff seeks to bring this Complaint on behalf of a class, this action cannot be maintained as a class action because, *inter alia*, Plaintiff does not and cannot satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiff and others allege to be members of the purported class have waived any and all claims, rights, and demands made by them in the Complaint.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff and others alleged to be members of the purported class have released any and all claims, rights, and demands made by them in the Complaint.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

10. Plaintiff's claims and the claims of others alleged to be members of the purported class may be barred because any alleged acts or omissions of Defendant giving rise to Plaintiff's claims, if any, were the result of an innocent mistake and/or bona fide error notwithstanding reasonable procedures implemented by Defendant to avoid any such acts or omissions. Defendant, at all times, acted in a reasonable manner in connection with the transactions at issue in this action.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiff's claims and the claims of others alleged to be members of the purported class may be barred because the acts or omissions of which Plaintiff complains have been approved and/or mandated, implicitly or expressly, by applicable statutes and regulations.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

12. Plaintiff's claims and the claims of others alleged to be members of the purported class may be barred because Defendant at all times complied in good faith with all applicable statutes and regulations.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

13. Defendant specifically denies that it acted with any knowledge, willfulness, oppression, fraud, or malice towards Plaintiff or others.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

14. Defendant specifically denies that it acted with any intent or knowledge to cause any injury or loss to Plaintiff or otherwise alleged to be members of the purported class.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

15. If Plaintiff or otherwise alleged to be members of the purported class suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or international misconduct of otherwise, and not by Defendant.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

16. If Plaintiff or others alleged to be members of the purported class suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the intervening acts of others, and not by Defendant.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Defendant reserves the right to amend and supplement its Answer to add affirmative defenses as necessary based on information obtained during its investigation or discovery.

WHEREFORE, Defendant demands judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/Jeffrey J. Seroogy

Jeffrey J. Seroogy  
REED SMITH LLP  
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Chicago, Illinois 60606-7507  
Tel: (312) 207 1000  
Fax: (312) 207 6400  
*Attorney for Defendant*

**CERTIFICATION OF SERVICE**

I, Jeffrey J. Seroogy, certify that on April 7, 2015, or as soon thereafter as service may be effectuated, I caused a true and accurate copy of the foregoing document to be served, via the ECF system, on the following parties:

Heather Kolbus, Esq.  
Edelman, Combs, Lattuner & Goodwin, LLC  
20 S. Clark Street, Suite 1500  
Chicago, Illinois 60603

/s/Jeffrey J. Seroogy

# **APPENDIX B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WHOLESALE POINT, INC.,	)	
on behalf of plaintiff and	)	
the class members defined herein,	)	
	)	
Plaintiff,	)	15 C 2196
	)	
v.	)	Judge Tharp
	)	Magistrate Judge Cox
FIVE-M SOFTWARE	)	
SYSTEMS CORPORATION,	)	
and JOHN DOES 1-10,	)	
	)	
Defendants.	)	

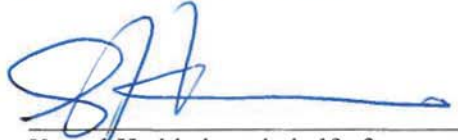
**AFFIDAVIT OF KAMAL HADDAD**

Kamal Haddad, on behalf of Wholesale Point, Inc., declares under penalty of perjury, as provided for by 28 U.S.C. §1746, that the following statements are true:

1. I have personal knowledge of the facts contained herein.
2. I am the Administrator of Wholesale Point, Inc.
3. Wholesale Point, Inc. is the plaintiff in the above-captioned lawsuit.
4. On December 27, 2013, plaintiff Wholesale Point, Inc. received the unsolicited fax advertisement attached as Exhibit A on its facsimile machine from defendant Five-M Software Systems Corporation.
5. Wholesale Point, Inc. has never done business with defendant Five-M Software Systems Corporation.
6. Wholesale Point, Inc. did not consent to receiving advertising facsimiles from defendant Five-M Software Systems Corporation.

7. Pursuant to 47 U.S.C. § 227 (b)(3), Wholesale Point, Inc. is entitled to receive \$1,500 in statutory damages for each unsolicited facsimile advertisement that was sent to it by defendant Five-M Software Systems Corporation.


Executed at Willowbrook Illinois, on 5/12, 2015



Kamal Haddad, on behalf of  
Wholesale Point, Inc.

Subscribed and sworn before me

this 12<sup>th</sup> day of May, 2015

  
Notary Public



Executed on 5/12, 2015



# **EXHIBIT A**

## DISTRIBUTION LIST: IT Department or Computer Software Purchasing Manager



FIVE-M SOFTWARE SYSTEMS, 1130 US Highway 46, Suite 26, Parsippany, NJ 07054

Tel: (973) 331-1611 Fax: (973) 331-9399

HYPERLINK "mailto:art@five-m.com" art@five-m.com HYPERLINK "http://www.fivem.com" www.fivem.com

Your company may have started out using the same wholesale distribution software which is commonly used in your industry; but your time, your growth, and the competitive marketplace may be suggesting a move to the next step. It is probably time for your company to go beyond the current limitations of your present wholesale distribution software; and, move forward to a better integration with technological devices at your disposal today.

Five-M Software Systems is a vendor which has been providing complete software solutions to the wholesale distribution industry for over 25 years. Five-M offers their customers a full range of services including:

- Custom Programming,
- Installation,
- Telephone Support and Assistance, and
- On-Site Training.

Five-M Software is proud to present its distribution software application that will live up to your expectations in terms of features, performance, user friendliness and productivity. The application runs on many different hardware platforms and operating systems including: Windows, Unix, Linux, etc. As a complete ERP System, we have clients running our business software on smart phones too. Therefore based on your business needs, our application can be configured to provide one seamlessly integrated ERP solution of individual modules working in concert or independently to provide a solution for growing your business and enhance your current business operations.

Five-M Software Solutions has been working with many distributors who have taken that next step and are reaping the rewards today. Moving to Five-M has eliminated concerns of re-entering information, possibly losing data, conforming to processes instead of running your business the way it will give you the best ROI, and providing your company with the reports and information to support your business plan. The system is priced below the average price for a similar **"ALL INCLUSIVE"** system in the marketplace today for the number of users interacting with the system. Just start by comparing our support cost, which starts at \$199 per month, to other systems annual support contract costs.

**Call 973.331.1611 - For a Live Demonstration of our Wholesale Distribution Software over the Internet!**

### Modules for a Basic System

PURCHASE	INVENTORY	GENERAL LEDGER	SALES	PAYABLES	RECEIVABLES	ORDERS	OTHER
RFQ	BIN & LOT ABILITY	MULTI COMPANY	INVOICES & CREDITS	MULTI COMPANIES & BANKS	CASH RECEIPTS	QUOTES	TOUCH SCREEN TECHNOLOGY
MULTI RFQ BROADCASTING	BOM & KIT PROCESSING	MULTI DIVISION	DAILY SALES JOURNAL	DEFAULT G/L # BY VENDOR	DAILY RECEIPTS	CREDIT CHECKING	SECURITY
DEMAND FORECASTING	PHYSICAL INVENTORY	CONSOLIDATION OF SUBS	MONTHLY SALES JRNL	AGED PAYABLES REPORT	JOURNAL	AUTOMATIC PRICING	BUYING GROUP INTEGRATION
CONSIGNMENT INVENTORY	PRODUCT SUBSTITUTION	13 PERIODS PER FISCAL YEAR	RMA	AUTO PAYMENT SELECTION	MONTHLY RECEIPTS	EASY ACCESS TO ALL	SERIAL # MANAGEMENT
BACK ORDER ALLOCATION	ITEM CROSS REFERENCE	USER CUSTOMIZED TRIAL-BALANCE	EMAIL INVOICES	CHECK PRINTING	JRNL	DATA DROP SHIPPING	BAR CODING
PURCHASE RETURNS	MULTI WAREHOUSE	AND INCOME STATEMENT	COMMISSIONS	MONTHLY CHECK REGISTER	MULTIBANK ABILITY	WEB ORDER	MOBILE ERP
P/O ACTIVITY DISPLAY	RFID WAREHOUSE INTEGRATION	TRANSACTION INQUIRY	ANALYSIS REPORTS	CHECK RECONCILIATION	AGED TRIAL BALANCES	COUNTER SALES	TABLET AND SMART PHONE
RECEIPTS NOT VOUCHERED	VALUATION REPORT	SALES TAX REPORTS	FLASH REPORTS	CASH REQUIREMENTS	COLLECTIONS REPORT	FEDDEX & UPS	RENTAL MODULE
QUOTE, ORDER, RFQ, PO	LOW STOCK REPORTING	RANKING REPORTS	SALES TAX REPORTS	ACH & EFT HANDLING	STATEMENTS	INTEGRATION	EDI & E-COMMERCE
CONVERSION FUNCTION					FOLLOW-UP REPORTS	PO CONVERT FUNCTION	